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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. EDWARD JAMES HARRIS, Defendant and Appellant.	E054549 (Super.Ct.No. RIF151317) OPINION

APPEAL from the Superior Court of Riverside County. Edward D. Webster, Judge. Affirmed.

David L. Kelly, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On December 14, 2010, an amended information charged defendant and appellant Edward James Harris with (1) two counts of robbery under Penal Code[1] section 211

[1] All statutory references are to the Penal Code unless otherwise specified.

(counts 1 & 2); and (2) willfully and unlawfully resisting a peace officer in discharge of his duty under section 148, subdivision (a). The information also alleged that defendant had been convicted of three serious felonies in the State of Washington, each offense a robbery and defined as a serious or violent felony under sections 667, subdivisions (a), (d)(2) and (e)(2)(A); and 1170.12, subdivision (c)(2)(A).[2]

On May 17, 2011, the court bifurcated the prior offense allegations from trial on the substantive offenses. On that same date, a jury was selected and trial began the next day. On May 19, 2011, defendant waived a jury trial on the prior offense allegations. On May 20, 2011, the jury returned verdicts of guilty as to each of the three substantive counts. On May 27, 2011, the prosecution filed a brief and argued that federal bank robberies constitute "serious" felonies under California's three strikes law. On June 14, 2011, defendant filed a motion to dismiss the federal bank robbery "strike" allegations. On August 1, 2011, the court found true the strike allegations involving federal bank robberies committed in Washington. On September 16, 2011, the court denied defendant's *Romero* motion and sentenced defendant to an aggregate term of 60 years to life. Four days later, defendant filed a timely notice of appeal.

[2] These prior offenses were actually federal bank robberies, in violation of Title 18 United States Code section 2113a, in United States District Court, Western District of Washington, case No. CR98-577R. The record, however, does not show that any party or the court was misled or misunderstood the nature of defendant's prior offenses.

I

STATEMENT OF FACTS

A. Count 1: American Securities Bank

In June of 2009, Monica Hampshire was employed as a teller at American Securities Bank in Corona. She had been a bank teller for five years and had been trained in safety measures as to how to activate the alarm in case of a robbery. Around noon on June 3, 2009, Hampshire was the only teller working a window. Rhiannon Westercamp was assisting another customer in opening a bank account. Defendant entered the bank, approached Hampshire's counter, and gave her a note that said, "Give me money." Hampshire testified that defendant was wearing a leather jacket, and the note was prewritten.

When Hampshire looked up, defendant said, "Give me your money now." He also said, "You won't get hurt. Give me all [the] money." He was speaking in such a quiet voice that Hampshire had to ask defendant "what," several times. At first, Hampshire thought defendant was joking. When she realized he was not, Hampshire turned around and glanced at her supervisor, who picked up her alarm as Hampshire reached for the money in the cash drawer. Hampshire pulled out the "bait money" and the rest of the money in her till and handed all the money to defendant. She estimated that she gave defendant approximately $1,700. As she handed defendant the money, she also triggered a silent alarm with her left hand. Defendant turned from the counter and walked to the front door. After he was out the door, defendant started to run. Hampshire did not see

whether defendant had any weapons on him. At the preliminary hearing, she was never asked if she, herself, was in fear. She told police officers that she was afraid.

When officers arrived at the scene, Hampshire was filling out the paperwork the bank requires when such an incident occurs. Hampshire told them that once she decided that defendant was not joking, she was afraid and looked at her supervisor "with a shocked look." On June 23, 2009, a detective showed Hampshire a photo lineup from which she picked defendant as the person who entered the bank and took the money on June 3. She also identified defendant in court.

B. Count 2: Guaranty Bank

On June 18, 2009, Penelope Gallanes was working as a teller at Guaranty Bank on Tyler Street in Riverside. She had been a bank teller at various banks for four and one-half years, and was trained to hand out "bait money" if ever she were robbed. Her teller station also had an alarm button. Around 4:15 p.m., defendant walked into the bank, came to her teller window and demanded that she give him her money. Specifically, defendant handed her a note and said, "This is a robbery, bitch. Give me your hundreds, fifties, and twenties." Gallanes was shocked at being called a bitch but gave him the money so he would leave. She did not see any weapons, but defendant motioned that he had a gun. Defendant did not say that he had a weapon or that he would hurt Gallanes. Defendant walked out of the bank but ran once he was outside. Defendant was wearing sunglasses. Gallanes was "really scared" and gave defendant approximately $2,130. She

had an opportunity to press a silent alarm, but she was scared and did not press it. She also did not give defendant the dye pack which would have triggered the alarm.

As defendant left the counter, Gallanes turned to her supervisor at the station next to her. The supervisor had already pressed the silent alarm, said "I know," and told Gallanes to go sit down. When officers arrived at the bank, Gallanes told the officers that she was nervous and scared. She also gave police a detailed description of the man involved in the incident.

At some point after the incident, Gallanes was shown a six-pack photographic lineup; she was unable to make an identification. On June 19, 2009, the supervisor was shown an eight-pack photographic lineup; she identified defendant as the man who took the money. Earlier in the day, a young lady had come into the bank and asked the supervisor how many times the bank had been robbed. This was out of the ordinary; the supervisor considered it suspicious enough to tell the officers about it when they arrived.

C. Count 3: Resisting Law Enforcement

Riverside Police Department Lieutenant Charles Griffitts was on duty on June 18, in full uniform, driving his marked and lighted police cruiser. He received information that a Black male adult, 40 to 45 years old, five feet six inches tall, with a stocky build, close or buzzed haircut, wearing a flowery or Hawaiian shirt, had just robbed the Guaranty Bank on Tyler Street in Riverside. About three quarters of a mile from the bank, Lieutenant Griffitts saw a Chevy Cavalier with no front license plate and what appeared to be a Black male driver. When he realized that it was a female driver, acting

strange and nervous, he followed her and stopped her. As he walked toward the driver's side of the Chevy, he heard the female yelling, "Why are you going to run?"

About the same time, a Black male rolled out of the passenger side of the Chevy and turned directly toward the officer. Startled, Lieutenant Griffitts drew his sidearm and yelled at the man to stop. Instead, the man ran southbound on Vine Street. The officer got back in his car and followed, but lost the man when the man scaled a fence between two buildings. In court, Lieutenant Griffitts identified defendant as that man. At the time of this occurrence, defendant was not wearing sunglasses or the Hawaiian-style shirt that was broadcast in the description.

On June 18, 2009, Detective James Brandt began his investigation of the incident at Guaranty Bank by driving to the scene where Griffitts had stopped the Chevy Cavalier. In the backseat of the car, the detective located a pair of metal-frame sunglasses and a crumpled note which stated, "This is a robbery!!" and "Give me hundreds, fifties, twenties now!!" He also recovered a yellow or gold striped shirt that defendant dropped while running from Griffitts. According to Detective Brandt, the shirt and sunglasses appeared to be the same as those depicted in the video surveillance of the incident at Guaranty Bank.

A couple of days later, Detective Brandt spoke to Gallanes at the bank, primarily to show her a photographic lineup. Gallanes told him that she did not pay any attention to the note she was handed, and that she was shocked and mad about being called a bitch.

Gallanes said nothing about having been afraid. She did state that defendant said, "this is a robbery, hundreds, fifties, twenties now."

On July 14, 2009, Detective Roger Planas with the Ontario Police Department spoke to defendant in jail. The next day, he executed a search warrant on his home. In the closet in the master bedroom, Detective Planas found several shirts including a blue plaid shirt, and a dark brown or black leather jacket. He also found social security documents bearing defendant's name.

D. Defense Case

On June 3, 2009, Corona Police Department Officer Beau Christian was dispatched to the American Securities Bank in Corona. There, he interviewed Hampshire and wrote a police report. Hampshire told him that defendant said, "Give me your money. I'm not kidding. Give me your money." The officer said that Hampshire first thought defendant was joking. In his report, Officer Christian noted that Hampshire told him the note said, "You won't get hurt. Give me - - all the money." As Hampshire was reading the note, defendant said forcefully, "Show me the money." Hampshire told the officer that she was afraid and even showed him that her hands were shaking. The officer did not push this detail in the report.

It was stipulated that Officer Reynolds would be unavailable to testify. Portions of his police report concerning his interview of Gallanes at Guaranty Bank were read into the record. The report stated that the suspect gave Gallanes a piece of paper. Before she could read the paper, the suspect said, "This is a robbery. Give me hundreds, fifties, and

twenty dollar bills now, bitch!" When Gallanes did not understand, the suspect repeated himself. When she realized what was happening, Gallanes gave the suspect $2,130, including "bait money." After Gallanes collected the money, the suspect said he did not want a bank bag. She described the suspect as very dark, five feet six inches tall, 200 pounds; last seen wearing mirrored glasses, a gold necklace, and a gold-colored long-sleeve shirt.

II

ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, and he has done so. In his five-page supplemental brief, defendant argues that the trial court erred in sentencing defendant because "the people[']s allegation(s) of prior strikes lack sufficient evidence to support their claims[.]"

Robbery under California law is a "serious" felony under section 1192.7, subdivision (c)(19) and therefore qualifies as a strike for three strikes purposes. (§ 667, subd. (d)(1).) Citing *People v. Jones* (1999) 75 Cal.App.4th 616, 632, defendant points out, however, that Title 18 United States Code section 2113(a) describes two classes of

offenses: the first paragraph makes it a felony to take or attempt to take property from another by force, fear, or intimidation in certain financial institutions; the second paragraph makes it a felony to enter or attempt to enter such institutions with the intent to commit a felony or larceny therein. He therefore argues that, to prove he committed a prior serious or violent felony under California law, the evidence must show beyond a reasonable doubt that he was convicted of conduct described in the first paragraph of Title 18 United States Code section 2113(a). (See *Jones*, at pp. 632-633.)

The least adjudicated elements test is the appropriate one for determining whether the federal priors qualify as serious felonies and strikes under California law. (*People v. Guerrero* (1988) 44 Cal.3d 343, 346-348, 354-355; *People v. Myers* (1993) 5 Cal.4th 1193, 1195.) Our Supreme Court explained: "A defendant whose prior conviction was suffered in another jurisdiction is, therefore, subject to the same punishment as a person previously convicted of an offense involving the same conduct in California." (*Myers*, at p. 1201.) In other words, in the absence of proof to the contrary, it will be presumed that a prior conviction involved only the minimum conduct necessary to satisfy the elements of the prior offense. (*People v. Rodriguez* (1998) 17 Cal.4th 253, 262.)

Under the current version of the least adjudicated elements test, the trier of fact may consider the entire record of the proceedings leading to the prior conviction to determine whether the prior offense "involved conduct which satisfies all of the elements of the comparable California serious felony offense." (*People v. Myers*, *supra*, 5 Cal.4th at p. 1195.) If not precluded by the rules of evidence or other statutory limitations, the

trier of fact may go beyond the least adjudicated elements of the offense and consider evidence found within the entire record of the foreign conviction. (*Ibid*.)

Where, as here, the prior conviction resulted from a guilty plea, the court may consider the accusatory pleading and the record of the plea to determine whether a particular element was adjudicated. (*People v. Johnson* (1991) 233 Cal.App.3d 1541, 1548; see also *People v. Guerrero*, *supra*, 44 Cal.3d at pp. 345, 356; *People v. Harrell* (1989) 207 Cal.App.3d 1439, 1444.) An element is considered to have been adjudicated if it was alleged in the accusatory pleading, even if it is not included in the statutory definition of the crime to which the defendant pleaded guilty. This is because a defendant's guilty plea constitutes "his voluntary admission he committed the acts alleged in the indictment . . . ." (*People v. Hayes* (1992) 6 Cal.App.4th 616, 623.)

Here, before the court trial on the prior conviction allegations, the prosecution filed a "bench brief regarding trial on the priors: federal bank robbery constitutes a serious violent felony." In the brief, the People properly framed the issue as follows: "In order for the federal bank robbery to be considered a serious strike offense under California's Three Strikes law[,] there has to be use of force, fear or intimidation. The question is whether or not the defendant used force or fear in the Washington bank robberies. The evidence from the record of conviction shows the defendant used force or fear. (*People v. Miles* (2008) 43 Cal.4th 1074, 1080, *People v. Jones* (1999) 75 Cal.App.4th 616.)" On June 14, 2011, defendant filed a motion to dismiss the federal bank robberies as "strike" allegations because "the record is not clear the elements in the

prior case establishes [*sic*] a serious felony." On August 1, 2011, the court held a bench trial regarding the prior conviction allegations. After discussing the briefs filed and documents presented, the trial court stated: "I find that the documents provided in conjunction with the conviction in the state of Washington is literally overwhelming that the crime committed was the robbery by intimidation or force and violence, as stated in the warrant for arrest, probably as in the Indictment and as in his actual acknowledgement of plea."[3] The federal indictment charged defendant with robbery "by force, violence and intimidation" in all three counts of robbery. Defendant pled guilty to all three counts. A review of the record in the supplemental clerk's transcript supports the trial court's finding.

We have now concluded our independent review of the record and find no arguable issues.

[3] The evidence concerning the federal offenses is contained in the 174-page supplemental clerk's transcript.

III

DISPOSITION

The judgment is affirmed.

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MCKINSTER
Acting P. J.

We concur:

RICHLI
J.

CODRINGTON
J.